Supreme Court, U.S.
FILED
'98 414 SEP 8 1998
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1997

In re KENNETH J. OWEN

On Petition For A Writ of Mandamus To The United States Court of Appeals For The Ninth Circuit

---

PETITION FOR WRIT OF MANDAMUS

KENNETH J. OWEN
IN PRO PER
6098 Slopeview Court
Castro Valley, CA 94552
Telephone: (510) 582-0540

45 pp

QUESTIONS PRESENTED

1. Whether the district court erred in not assuming subject matter jurisdiction under the *Rooker-Feldman* doctrine over general challenges to state bar admission rules.
2. Even if subject matter jurisdiction is lacking, whether the district court exceeded its authority in dismissing the complaint with prejudice.

PARTIES TO THE PROCEEDING

Petitioner, Kenneth J. Owen, was a plaintiff in the district court and an appellant in the court of appeals. Respondents Malcolm M. Lucas, Stanley Mosk, Joyce L. Kennard, Armand Arabian, Marvin R. Baxter, Ronald M. George, Kathryn M. Weredeger, California Supreme Court Justices; respondents Paul D. Jefferson, Julio Mateo, Jr., Mukesh Advani, Vivien Bronshvag, Martha C. Byrnes, Roberto Deazilan, Margaret deBeers Brown, Patrick R. Dixon, Yonkel N. Goldstein, George G. Gougani, Hohn C. Hisserich, James B. Hussey, Teri L. Jackson, Marilyn J. Mackett, Patricia M. Villalobos, members of the Committee of Bar Examiners of the State Bar of California; respondent Adam S. Ferber, Director of Examinations of the Committee of Bar Examiners of the State Bar of California; respondents Diane C.Yu, Richard J. Zanassi, Teri L. Nelson, Colin P. Wong, attorneys for the Committee of Bar Examiners of the State Bar of California; and respondent Dr. Stephen P. Klein, consultant to the Committee of Bar Examiners of the State Bar of California were defendants in the district court and appellees in the court of appeals.

JUDGES SUBJECT TO WRIT OF MANDAMUS

Melvin Brunetti, Ninth Circuit Judge, Reno, Nevada
Thomas G. Nelson, Ninth Circuit Judge, Boise, Idaho
Pamela Ann Rymer, Ninth Circuit Judge, Pasadena, California
Charles A. Legge, District Court Judge, N.D. of California

AMICUS FRIENDS

Oakland College of Law
Peninsula University College of Law
American University College of Law
Western Sierra Law School

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The unpublished opinion of the court of appeals (Pet. App. 1) is reported at 142 F.3d 444. The court of appeals' order denying the petition for rehearing (Pet. App. 17) may not be reported. The unpublished order (Pet. App. 3) and judgment (Pet. App. 15) of the district court is not reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on April 24, 1998. A petition for rehearing was filed on May 6, 1998, and denied on June 10, 1998. This Court's jurisdiction is based on 28 U.S.C. § 1651(a), and Supreme Court Rule 20.

LEGAL PROVISIONS INVOLVED IN THIS CASE

U.S. Const. art. III, § 1:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

28 U.S.C. § 1257(a):

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the

Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT

Petitioner Kenneth Owen ("Owen") is a 52 year old married man with three children who at the age of 47 decided to become a lawyer. He works full time and attended Oakland College of Law in the evenings. In June of 1998, he received his Juris Doctor (With Great Distinction). He applied to Golden Gate University School of Law and was accepted into their LL.M. program (Masters in Laws) in Environmental Law. He is attending part-time and will graduate in May of 2000. He has passed the Moral Character Determination administered by the State Bar. He has also passed the MultiState Professional Responsibility Examination administered by the National Conference of Bar Examiners. One of the requirements for certification to the California Supreme Court for admission and a license to practice law in California is taking and passing the California Bar Examination. The Committee of Bar Examiners of the State Bar of California ("Committee") will not let him take the California General Bar Examination because he has not passed a First Year Law Students' Examination ("FYLSX"). Pet. App. 28.

Oakland College of Law has been authorized by the State of California to grant Juris Doctor degrees pursuant to California Education Code § 94310. Oakland College of Law is not accredited by the Committee of Bar Examiners of the State Bar of California. Pursuant to California Business & Professions Code § 6060(g) [renumbered 6060(h)], students attending unaccredited law schools are required to take and pass a First Year Law Students' Examination.

Owen took the June and October 1994 FYLSXs and did not receive passing scores. Owen wrote to California State Assemblymember Sweeney, seeking reconsideration by the Committee of his grades on the FYLSX. Defendant Adam S. Ferber denied Owen's request for reconsideration. Owen then petitioned the Committee Members for certification as having

passed the FYLSX. The Committee Members responded by letter dated March 28, 1995, Pet. App. 18, denying Owen's request for certification as having passed the FYLSX.

Pursuant to California Rules of Court, Rule 951(g) and Rule 952(d), the California Supreme Court has original and exclusive jurisdiction of attorney admissions and discipline. On May 10, 1995, Owen filed a Petition for Review in the California Supreme Court. On October 4, 1995, the California Supreme Court denied Owen's Petition for Review. Pet. App. 19. On January 2, 1996, Owen filed a Petition for Writ of Certiorari with the United States Supreme Court. On March 18, 1996, the Supreme Court of the United States denied Owen's Petition for Writ of Certiorari. Pet. App. 22.

Owen then filed a complaint on September 5, 1996 in the United States District Court for the Northern District of California. Owen stated eight causes of action: (1) Violation of Procedural Due Process; (2) Violation of Substantive Due Process; (3) Violation of the Equal Protection Clause; (4) Violation of 42 U.S.C. § 1983; (5) Violation of 42 U.S.C. § 1985; (6) General Challenge to Validity of California Rules of Court, Rule 952(d); (7) General Challenge to Validity of Business & Professions Code § 6060(g); and (8) Declaratory Relief pursuant to 28 U.S.C. §§ 2201 and 2202.

Respondents filed a motion to dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6)) of the Federal Rules of Civil Procedure on October 28, 1996, raising the issues of: (1) subject matter jurisdiction; (2) the Eleventh Amendment; (3) the doctrine of absolute judicial immunity; (4) failure to state a valid constitutional claim; and (5) the doctrines of res judicata and collateral estoppel.

A hearing on the motion to dismiss was held on December 6, 1996, before the Honorable Judge Charles A. Legge. The court dismissed the complaint with 30 days leave to amend.

Owen filed a First Amended Complaint on January 3, 1997. The First Amended Complaint named all defendants in their individual capacities as opposed to their official capacities, as well as dropping the cause of action for conspiracy under 42 U.S.C. § 1985.

Respondents filed a motion to dismiss the First Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure on January 30, 1997, raising the issues of: (1) subject matter jurisdiction; (2) the Eleventh Amendment; (3) failure to state a claim for relief under the Fourteenth Amendment to the United States Constitution; (4) the doctrine of absolute judicial immunity; and (5) the doctrine of res judicata.

A hearing on the motion to dismiss the First Amended Complaint was held on March 14, 1997, before the Honorable Judge Charles A. Legge. The court dismissed the complaint with prejudice for the following reasons:

> (1) federal district courts lack subject-matter jurisdiction to hear this matter; (2) Defendants are immune from suit under the doctrines of quasi-judicial and absolute judicial immunity; (3) Plaintiff has failed to state a valid constitutional claim against Defendants; and (4) the doctrines of res judicata and collateral estoppel bar relitigation of the claims raised by Plaintiff. These grounds for dismissal are further addressed in the Court's rulings from the bench on March 14, 1997 and on December 6, 1996.

Pet. App. 4-5.

The court entered its Order (Pet. App. 3) and Judgment (Pet. App. 15) on March 31, 1997. Owen filed a Notice of Appeal on April 28, 1997. The Ninth Circuit Court of Appeals decided the case without oral argument and affirmed "for the reasons stated by the district court." Pet. App. 2. A petition for rehearing was filed on May 6, 1998 but denied on June 10, 1998. Pet. App. 17.

SUMMARY OF ARGUMENT

Federal district courts have subject matter jurisdiction over general challenges to state bar rules under the well settled *Rooker-Feldman* doctrine. Owen made individual as well as general challenges to the state bar rules. Admittedly, it was an error for Owen to pursue those individual challenges in the district court. However, the district court "threw the baby out

with the bath water" when it dismissed the general challenges as well as the individual challenges.

The district court reasoned that "the challenge that he's now making to the rules really is so intertwined with his own situation that he cannot make a general challenge." Pet. App. 13. There is no legal authority to support this reasoning. The Ninth Circuit affirmed for "the reasons stated by the district court." Pet. App. 2. However, even the Ninth Circuit recognizes that "Federal district courts have subject matter jurisdiction over general challenges, but not over individual challenges." *Tofano v. Supreme Court of Nevada*, 718 F.2d 313, 314 (9th Cir. 1983).

The *Rooker-Feldman* doctrine provides that a plaintiff can bring two types of types of challenges to state bar admission rules to federal court. "The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim, based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 485 (1983). Under the *Rooker-Feldman* doctrine, district courts have subject matter jurisdiction over the first type of claim. They do not have subject matter jurisdiction over the individual claim. This individual "claim may be heard, if at all, exclusively by the Supreme Court of the United States." *Ibid.*

Consequently, the district court had subject matter jurisdiction over Owen's Fifth and Sixth Causes of Action. Pet. App. 23-25. The district court failed to exercise its authority under the *Rooker-Feldman* doctrine when it was its duty to do so.

Under these exceptional circumstances, a writ of mandamus is an appropriate remedy to compel the district court to assume jurisdiction over Owen's general challenges to the state bar rules under the *Rooker-Feldman* doctrine.

Even if this Court should determine that the district court did not have jurisdiction over Owen's general challenges to the state bar rules, mandamus is still an appropriate remedy to

confine the district court from exceeding its jurisdiction when it dismissed the complaint with prejudice.

For these and all the reasons set forth more fully below, the decision of the court of appeals should be vacated, and the case remanded to the district court with instructions to assume jurisdiction over Owen's general challenges to the state bar rules.

ARGUMENT

I. MANDAMUS SHOULD ISSUE TO COMPEL THE DISTRICT COURT TO EXERCISE ITS AUTHORITY UNDER THE *ROOKER-FELDMAN* DOCTRINE WHEN IT IS ITS DUTY TO DO SO.

The traditional use of the writ of mandamus in federal courts "has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 308 (1989). Under the *Rooker-Feldman* doctrine, the district court had a duty to exercise its authority over Owen's general challenges to the state bar rules.

This Court has recognized that in order to insure that the writ will issue only in extraordinary circumstances the Court has required that the petitioner seeking the writ have no other adequate means to attain the relief he desires; and that he carry the burden of showing that his right to the writ is clear and indisputable. *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35(1980).

In the present case, Owen has no other adequate remedy to challenge the constitutional validity of the state bar rules. Owen filed a petition for writ of certiorari before this Court asking it to rule on the validity of California Business & Professions Code § 6060(g). Pet. App. 21. This Court denied the petition for a writ of certiorari. Pet. App. 22.

Significantly, in 1988 Congress amended 28 U.S.C. § 1257(a) to eliminate the *right* to appeal the judgment of the highest court of a state where the validity of a statute of any

State is drawn in question on the ground of its being repugnant to the Constitution. Thereafter, parties to such cases could only request *discretionary* review by writ of certiorari. It is highly unlikely that the Court would grant the writ of certiorari at this time to determine the validity of the state bar rules at issue in the present case. Therefore, "adequate relief cannot be obtained in any other form or from any other court." Supreme Court Rule 20.1.

Additionally, Owen has carried the burden of showing that his right to the writ of mandamus is clear and indisputable. It is indisputable that federal district courts have subject matter jurisdiction over general challenges to state bar rules under the well settled *Rooker-Feldman* doctrine. The district court failed to exercise its authority under the *Rooker-Feldman* doctrine when it was its duty to do so.

Lastly, to justify the granting of a writ of mandamus, "the petition must show that the writ will be in aid of the Court's appellate jurisdiction." Supreme Court Rule 20.1. This Court has recognized that "[i]ts authority is not confined to the issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected." *Roche v. Evaporated Milk Ass'n.*, 319 U.S. 21, 25 (1943). Thus, in the present case, the case is still within the Court's appellate jurisdiction even though no appeal has been filed.

Mandamus should issue to compel the Ninth Circuit Court of Appeals to vacate its order and to compel the United States District Court for the Northern District of California to assume jurisdiction over Owen's general challenges to the state bar rules under the *Rooker-Feldman* doctrine.

II. MANDAMUS SHOULD ISSUE TO CONFINE THE DISTRICT COURT TO A LAWFUL EXERCISE OF ITS PRESCRIBED JURISDICTION.

The traditional use of the writ of mandamus in federal courts "has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Mallard v. U.S. Dist.*

Court for Southern Dist. of Iowa, 490 U.S. 296, 308 (1989). Even if this Court should determine that the district court did not have subject matter jurisdiction over Owen's general challenges to the state bar rules under the *Rooker-Feldman* doctrine, the district court exceeded its jurisdiction when it dismissed Owen's complaint with prejudice. Pet. App. 5 and 16. It is fundamental that a dismissal for lack of jurisdiction is not an adjudication of the merits and therefore dismissal of the claim must be without prejudice. *Costello v. United States*, 365 U.S. 265, 284-286 (1961)).

The Ninth Circuit recognized in *Wages v. I.R.S.*, 915 F.2d 1230, 1234 (9th Cir. 1990), that a judge ordering dismissal based upon lack of subject matter jurisdiction retains no power to make judgments relating to the merits of the case. The Ninth Circuit then held that a district court could not rule in the alternative on a motion to dismiss for failure to state a claim *after* determining that it lacked subject matter jurisdiction. *Ibid.* In the present case, the district court, after finding that there was no subject matter jurisdiction, went on to dismiss the case based on a failure to state a claim. Pet. App. 4 and 16. The district court reasoned that "bottom line, I just don't see that I've got jurisdiction, and that the claims you state can go ahead. So for the reasons I've just stated, as well as for the reasons that I stated on the record on December 6 of 1996, I'm going to dismiss the claim – the case. And since this is on the amended complaint this time the dismissal will be with prejudice." Pet. App. 13.

Significantly, this Court has recognized that "[w]hether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy." *Bell v. Hood*, 327 U.S. 678, 682 (1946). The district court never assumed jurisdiction, and consequently, retained no power to dismiss Owen's claims for failure to state a claim. Thus, the district court exceeded its jurisdiction. Mandamus should issue to confine the district court to a proper exercise of its jurisdiction.

Additionally, the Ninth Circuit exceeded its jurisdiction when it affirmed "for the reasons stated by the district court." Pet. App. 2. This Court has recognized that when lower federal courts lack jurisdiction, the appellate court has "jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1989) (citation omitted). When the Ninth Circuit affirmed for the reasons stated by the district court, it made a decision on the merits, thereby exceeding its authority. Mandamus should issue to confine the Ninth Circuit to a proper exercise of its jurisdiction.

CONCLUSION

For all the foregoing reasons, the decision of the court of appeals should be vacated, and the case remanded to the district court with instructions to assume jurisdiction over Owen's general challenges to the state bar rules. Alternatively, the district court's decision should be vacated with instructions to dismiss the complaint without prejudice.

Respectfully Submitted,

Kenneth J. Owen

Kenneth J. Owen

Dated: September 5, 1998

PETITIONER'S APPENDIX*

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* Some excerpts of the appendix will be in bold to assist the Court in locating the specific citation.

FILED
APR 24 1998
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KENNETH OWEN, Plaintiff-Appellant,	)	No. 97-15767
v.	)	D.C. No.
MALCOLM M. LUCAS, Justice;STANLEY MOSK; JOYCE KENNARD; ARMAND ARABIAN; MARVIN BAXTER; KATHRYN MICKLE WERDEGAR; PAUL D. JEFFERSON; JULIO MATEO, JR.; MUKESH ADVANI; VIVIEN BRONSHVAG; MARTHA C. BYRNES; ROBERTO DEAZILAN; MARGARET DE BEERS BROWN; PATRICK R. DIXON; YONKEL N. GOLDSTEIN; GEORGE G. COWGANI; JOHN HISSERICH; JAMES HUSSEY; MARILYN J. MACKETT; PATRICIA M. VILLALOBOS; ADAM S. FERBER; DIANE C. YU; RICHARD J. ZANASSI; TERI L. NELSON; COLIN P. WONG; STEPHEN P. KLEIN, M.D., Defendants-Appellees	)	CV-96-03244-CAL **MEMORANDUM***

Appeal from the United States District Court
for the Northern District of California
Charles A. Legge, District Judge, Presiding
Submitted April 20, 1998**

Before: BRUNETTI, RYMER and T.G. NELSON, Circuit Judges

Kenneth J. Owen appeals pro se the district court's dismissal for lack of subject matter jurisdiction over his 42 U.S.C. § 1983 action challenging a decision of the California Supreme Court which denied his petition for writ of review of the decision of the Committee of Bar Examiners which found that Owen had failed the First Year Law Students' Examination. **We affirm for the reasons stated by the district court**. See Craig v. State Bar of California, No. 96-55396, slip op. 3591 (9th Cir. April 17, 1998) (applying District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983)); see also Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996); Hirsh v. Justices of the Supreme Court of California, 67 F.3d 708, 714 (9th Cir. 1995); Rosenthal v. Justices of the Supreme Court of California, 910 F.2d 561, 567 (9th Cir. 1990).

AFFIRMED

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4. Accordingly, Owen's request for oral argument is denied. The brief from amicus curiae Oakland College of Law is ordered filed.

RECEIVED
MAR 24 1997
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CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

FILED
MAR 31 1997
RICHARD W. WIEKING
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH J. OWEN, Plaintiff, v. MALCOLM M. LUCAS, et al. Defendants.	) Case No. C 96-03244 CAL)) **ORDER DISMISSING**) **FIRST AMENDED**) **COMPLAINT**) ENTERED IN CIVIL) DOCKET MAR 31 1997

The State Bar Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, joined in by the Defendant Justices of the California Supreme Court, came on regularly for hearing on March 14, 1997, at 9:30 a.m. in Courtroom 10, before the Honorable Charles A. Legge. Teri L. Nelson appeared on behalf of the State Bar Defendants, Daniel G. Stone appeared on behalf of the Justices of the California Supreme Court, and Plaintiff Kenneth J. Owen appeared pro se.

Having reviewed and considered the State Bar Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, the Joinder and Supplemental Points and Authorities of the Justices of the California Supreme Court, Plaintiff's Memorandum of Points and Authorities in Opposition to Motion to Dismiss First Amended Complaint, Defendants' Joint Reply Brief, and the Plaintiff's oral argument at the hearing on Defendants' motion, the Court finds that: **(1) federal district courts lack subject-matter jurisdiction to hear this matter; (2) Defendants are immune from suit under the doctrines of quasi-judicial and absolute judicial immunity; (3) Plaintiff has failed to state a valid constitutional claim against Defendants; and (4) the doctrines of res judicata and collateral estoppel bar relitigation of the claims raised by Plaintiff. These grounds for dismissal are further addressed in the Court's rulings from the bench on March 14, 1997 and on December 6, 1996.** The transcripts of the Court's December 6, 1996 and March 14, 1997 oral rulings

are attached to this Order and incorporated herein by reference.

Accordingly, the Court hereby orders, adjudges and decrees that Defendants' Motion to Dismiss Plaintiff's First Amended Complaint in this matter is GRANTED, and that Plaintiff's First Amended Complaint is DISMISSED **with prejudice** AS TO ALL DEFENDANTS.

IT IS SO ORDERED.

DATED: 3-31-97

"s/Charles A. Legge"
HONORABLE CHARLES A. LEGGE
Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA BEFORE THE HONORABLE CHARLES A. LEGGE, JUDGE

KENNETH J. OWEN, Plaintiff,)
v.) No. C 96-03244 CAL
MALCOLM M. LUCAS, et al. Defendants.)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: KENNETH J. OWEN, IN PRO PER
6098 SLOPEVIEW COURT
CASTRO VALLEY, CA 94552

FOR STATE BAR DEFENDANTS: THE STATE BAR OF CALIFORNIA
OFFICE OF GENERAL COUNSEL
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SAN FRANCISCO, CA 94102
BY: TERI L. NELSON, ESQ.

FOR SUPREME COURT JUSTICE DEFENDANTS: DANIEL E. LUNGREN
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1300 I STREET, SUITE 125
SACRAMENTO, CA 94244-2550
BY: DANIEL G. STONE,
DEPUTY ATTORNEY GENERAL

REPORTED BY: LEO T. MANKIEWICZ, CSR, RPR
OFFICIAL REPORTER, USDC

FRIDAY, DECEMBER 6, 1996 10:09 A.M.

THE CLERK: CALLING CIVIL 96-3244, KENNETH OWEN VERSUS MALCOLM LUCAS, ET AL.

MS. NELSON: TERI NELSON, APPEARING FOR THE STATE BAR DEFENDANTS.

MR. OWEN: KENNETH OWEN, IN PRO PER.

MR. STONE: DANIEL STONE FOR THE CALIFORNIA SUPREME COURT JUSTICES, AND THE FORMER JUSTICES.

THE COURT: ALL RIGHT. WE'RE HERE FOR THE DEFENSE MOTIONS TO DISMISS. I HAVE READ THE MOVING AND OPPOSING PAPERS, AND DOES EITHER SIDE HAVE ANYTHING FURTHER YOU'D LIKE TO ADD?

MS. NELSON: YOUR HONOR, UNLESS THE COURT HAS SPECIFIC QUESTIONS THAT WE CAN ADRRESS, THE DEFENDANTS BELIEVE THAT THE MATTER IS FULLY BRIEFED AND WOULD SUBMIT ON THE BRIEFS.

THE COURT: OKAY.

MR. OWEN: I WOULD AGREE WITH THAT, YOUR HONOR, UNLESS YOU HAVE QUESTIONS.

THE COURT: ALL RIGHT. WE'RE HERE FOR THE DEFENDANT'S' MOTION TO DISMISS, AND THE COMPLAINT IS FRAMED IN EIGHT CAUSES OF ACTION: PROCEDURAL DUE PROCESS, SUBSTANTIVE DUE PROCESS, EQUAL PROTECTION, SECTION 1983, SECTION 1985, DUE PROCESS DEALING WITH THE CALIFORNIA RULES OF COURT, AND INVALIDITY OF THE CALIFORNIA STATUTE, BUSINESS AND PROFESSIONS CODE 6060(G), AND FOR DECALARATORY RELIEF.

NOW, IN GOING THROUGH THE BRIEFING, IT JUST DOESN'T SEEM TO ME THAT THERE'S A CAUSE OF ACTION HERE THAT THE PLAINTIFF IS ENTTILED TO PROCEED ON. WHAT I'M GOING TO DO IS TO DISMISS THE COMPLAINT, AND I'M GOING TO GIVE THE PLAINTIFF AN OPPORTUNITY TO AMEND, AND STATE HERE WHAT I SEE IN THIS AS BEING WHAT I

THINK ARE FATAL PROBLEMS, BUT PROBLEMS THAT CERTAINLY THE PLAINTIFF CAN ATTEMPT TO PLEAD HIS WAY AROUND. I'M NOT GOING TO GO THROUGH THIS CAUSE OF ACTION BY CAUSE OF ACTION, BUT YOU'LL SEE THE PRINCIPLES.

I THINK PLAINTIFF HAS A SERIOUS ELEVENTH AMENDMENT PROBLEM. I THINK THE CASE OF DISTRICT OF COLUMBIA V. FELDMAN AND PENNHURST V. ALDERMAN POSE A REAL PROBLEM.

I THINK AS FAR AS THE JUDICIAL DEFENDANTS ARE CONCERNED, THEY HAVE ABSOLUTE IMMUNITY, UNDER THE CASE OF HIRSH V. THE SUPREME COURT.

I THINK MEMBERS OF THE STATE BAR HAVE QUASI-JUDICIAL IMMUNITY. I THINK THE CASE OF GIANNINI V. REAL, IN BOTH THE DISTRICT COURT AND THE NINTH CIRCUIT, CERTAINLY PUT ROADBLOCKS IN THE PLAINTIFF'S WAY HERE.

SPECIFICALLY ON THE SUBJECT OF DUE PROCESS, I THINK IT SHOULD BE CLEAR THAT THE PLAINTIFF HAS HAD DUE PROCESS. HE'S RAISED THESE ISSUES IN COURT, AND HAS HAD THEM HEARD UP TO THE LEVEL OF THE CALIFORNIA SUPREME COURT AND EVEN A PETITION FOR CERTIORARI TO THE UNITED STATES SUPREME COURT. BASED UPON LUPERT V. STATE BAR, I DOUBT THAT THERE'S ANY VIOLATION OF SUBSTANTIVE DUE PROCESS OR EQUAL PROTECTION.

UNDER SECTIONS 1983 AND 1985, I DON'T SEE ANY VIOLATION OF FEDERAL RIGHTS, AND I DON'T SEE ANY FACTUAL ALLEGATIONS OF A CONSPIRACY, IF THAT'S WHAT THE CLAIM UNDER 1985 IS. YOU JUST CAN'T SAY THERE'S BEEN A CONSPIRACY. YOU HAVE TO ALLEGE FACTS THAT SHOW THE CONSPIRACY.

I ALSO THINK THAT THERE IS A GREAT DEAL TO THE DEFENDANT'S RES JUDICATA AND COLLATER-

AL ESTOPPEL ARGUMENTS BASED ON KONIGSBURG V. THE STATE BAR AND CONSUMERS' LOBBY V. THE PUBLIC UTILITIES COMMISSION.

SO THESE ARE THE PROBLEMS AND DEFECTS THAT I SEE WITH THE COMPLAINT. SO I'M GOING TO DISIMISS IT, AND THOSE ARE THE THINGS I THINK THAT MR. OWEN COULD ATTEMPT TO PLEAD HIS WAY AROUND, IF HE CAN DO SO. SOME OF THESE MAY BE LEGAL MATTERS WHERE HE CAN'T PLEAD HIS WAY AROUND, OR HE MAY CONVINCE ME ON LATER BRIEFING THAT I WAS INCORRECT IN MY FIRST CUT, BUT THAT WILL BE THE ORDER, THAT THE COMPLAINT WILL BE DISMISSED, WITH LEAVE TO AMEND.

MR. OWEN: HOW MUCH TIME DO I HAVE FOR THAT, YOUR HONOR?

THE COURT: PARDON?

MR. OWEN: HOW MUCH TIME DO I HAVE?

THE COURT: HOW MUCH DO YOU WANT?

MR. OWEN: THIRTY DAYS?

THE COURT: THAT'S FINE, THIRTY DAYS.

MR. OWEN: WILL YOU REQUIRE ANOTHER—

THE COURT: YOU'RE GOING TO GET ANOTHER MOTION TO DISMISS. THAT'S INEVITABLE. YOU TELL YOUR CLIENTS, THEY FILE A MOTION TO DISMISS, THEN YOU GET YOUR CHANCE TO PLEAD.

MR. OWEN: THANK YOU, YOUR HONOR.

MS. NELSON: THANK YOU, YOUR HONOR.

MR. STONE: THANK YOU, YOUR HONOR.

10:14 A.M.

CERTIFICATE OF REPORTER

I, LEO T. MANKIEWICZ, OFFICIAL REPORTER FOR THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA 94102, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT PAGES, NUMBERED 1 THROUGH 5, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

DECEMBER 12, 1996

"s/Leo T. Mankiewicz"
LEO T. MANKIEWICZ, CSR #5297
OFFICIAL REPORTER, USDC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH J. OWEN, Plaintiff,	)
	) No. C-96-03244-CAL
v.	)
MALCOLM M. LUCAS, et al. Defendants.	) MARCH 14, 1997

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE CHARLES A. LEGGE, JUDGE

APPEARANCES:

FOR PLAINTIFF: KENNETH J. OWEN,
(IN PROPRIA PERSONA)
6098 SLOPEVIEW COURT
CASTRO VALLEY, CA 94552

FOR DEFENDANTS: TERI L. NELSON, ESQ.
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
555 FRANKLIN STREET
SAN FRANCISCO, CA 94102

DANIEL E. LUNGREN, ESQ.
ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA

BY: DANIEL G. STONE, ESQ.
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
STATE OF CALIFORNIA
1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

REPORTED BY: CARL PLINE
OFFICIAL COURT REPORTER

THANK YOU.

THE COURT: ALL RIGHT.

THIS IS THE MOTION TO DISMISS OF THE DEFENDANTS.

IN DECEMBER OF LAST YEAR I GRANTED THE DEFENDANTS' MOTION TO DISMISS WITH LEAVE TO AMEND.

AND MR. OWEN FILED HIS AMENDMENT, AND THE DEFENDANTS AGAIN MOVED TO DISMISS, ESSENTIALLY BASED ON LACK OF SUBJECT MATTER JURISDICTION AS WELL AS THE FAILURE TO STATE A CLAIM.

THE CONTENTIONS OF THE DEFENDANTS ARE THAT THIS COURT HAS NO SUBJECT MATTER JURISDICTION TO REVIEW THE FINAL DECISON OF THE CALIFORNIA SUPREME COURT ON THIS QUESTION – ON THIS MATTER.

AND NO SUBJECT MATTER JURISDICTION BECAUSE OF SOVEREIGN IMMUNITY.

AND THAT A SUIT FOR DAMAGES AGAINST THE STATE BAR IS BARRED BY QUALIFIED IMMUNITY.

FAILURE TO STATE A CASE FOR DUE PROCESS, FAILURE TO STATE A CLAIM FOR SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION, FAILURE TO STATE A CLAIM FOR DAMAGES UNDER SECTION 1983, RES JUDICATA AND COLLATERAL ESTOPPEL.

AND THAT MR. OWEN CANNOT MAKE A GENERAL CHALLENGE TO THE VALIDITY OF THE RULES OF COURT AND THE STATE BAR RULES.

AND THAT MR. OWEN'S ACTION AGAINST THE JUDICIAL OFFICERS HERE IS BARRED BY ABSOLUTE IMMUNITY.

NOW, WE'RE DEALING WITH A SUBJECT HERE WHICH IS . . . I THINK INHERENTLY WITHIN THE INTERESTS OF STATE LAW AND THE STATE COURTS; THAT IS, THE ADMISSION OF ATTORNEYS TO PRACTICE LAW IN THE COURTS OF THE STATE.

IT'S A CHALLENGE TO CERTAIN BAR EXAMINATION PROCEDURES, AND THE SCALES USED IN GRADING BAR EXAMINATION PROCEDURES.

IT'S REALLY ENTIRELY A MATTER OF STATE INTEREST. AND I AGREE WITH THE DEFENDANTS THAT THERE JUST ISN'T FEDERAL JURISDICTION HERE.

I DON'T THINK THERE IS SUBJECT MATTER JURISDICTION.

I THINK THE PARTIES IN THE SUIT ARE ENTITLED TO IMMUNITY.

I THINK WE HAVE OUR ELEVENTH AMENDMENT PROBLEM.

AND I STILL THINK BECAUSE MR. OWEN'S MATTER WENT ALL THE WAY UP THROUGH THE CALIFORNIA SUPREME COURT, AND I BELIEVE A PETITION FOR CERT DENIED BY THE U.S. SUPREME COURT, THE MATTER – THAT HIS MATTER IS A FINAL MATTER.

AND I ALSO BELIEVE THAT THE CHALLENGE HE'S NOW MAKING TO THE RULES REALLY IS SO INTERTWINED WITH HIS OWN SITUATION THAT HE CANNOT MAKE A GENERAL CHALLENGE.

IN ESSENCE, MR. OWEN, I THINK YOU'VE DONE YOUR BEST. I CAN SEE YOU'VE WORKED HARD AT IT. AND IT'S CERTAINLY A VERY COMPETENT PRESENTATION.

BUT, **BOTOM LINE, I JUST DON'T SEE THAT I'VE GOT JURISDICTION, AND THAT THE CLAIMS YOU STATE CAN GO AHEAD.**

SO FOR THE REASONS I'VE JUST STATED, AS WELL AS FOR THE REASONS THAT I STATED ON THE RECORD ON DECEMBER 6 OF 1996, I'M GOING TO DISMISS THE CLAIM – THE CASE.

AND SINCE THIS IS ON THE AMENDED COMPLAINT THIS TIME THE DISMISSAL WILL BE WITH PREJUDICE

SO I WILL ASK THE DEFENDANTS TO SUBMIT A PROPOSED FORM OF ORDER, AND A PROPOSED FORM OF JUDGMENT.

MS. NELSON: THANK YOU, YOUR HONOR.

MR. STONE: THANK YOU, YOUR HONOR.

(WHEREUPON THESE PROCEEDINGS CONCLUDED AT 9:52 A.M.)

CERTIFICATE OF REPORTER

I, CARL R. PLINE , OFFICIAL REPORTER FOR THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA 94102, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT PAGES, NUMBERED 1 THROUGH 10, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

"s/Carl R. Pline"
CARL R. PLINE, CSR
OFFICIAL COURT REPORTER

RECEIVED
MAR 24 1997
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

FILED
MAR 31 1997
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH J. OWEN, Plaintiff, v. MALCOLM M. LUCAS, et al. Defendants.	) Case No. C 96-03244 CAL)) **JUDGMENT**) (Rule 58, Fed.) Rules Civ. Proc.)) ENTERED IN CIVIL) DOCKET MAR 31 1997

This cause came on for hearing on Defendant's Motion to dismiss the action on the grounds of 1) lack of subject-matter jurisdiction; 2) judicial and quasi-judicial immunities; 3) failure to state a valid constitutional claim; and 4) the bars of res judicata and collateral estoppel. The Court having granted Defendants' motion and having ordered that Plaintiff's First Amended Complaint be dismissed, **with prejudice**.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action be **dismissed in its entirety, with prejudice, for lack of subject-matter jurisdiction, for failure to state a valid claim**, for failure to overcome Defendants' judicial and quasi-judicial immunities, and because this action is barred by the doctrines of res judicata and collateral estoppel, as further set forth in the Court's Order Dismissing First Amended Complaint.

DATED: 3/31/97

"s/Charles A. Legge"
HONORABLE CHARLES A. LEGGE
Judge, United States District Court

FILED
JUN 10 1998
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

KENNETH OWEN, Plaintiff-Appellant,	)	No. 97-15767
v.	)	D.C. No.
MALCOLM M. LUCAS, Justice;STANLEY MOSK; JOYCE KENNARD; ARMAND ARABIAN; MARVIN BAXTER; KATHRYN MICKLE WERDEGAR; PAUL D. JEFFERSON; JULIO MATEO, JR.; MUKESH ADVANI; VIVIEN BRONSHVAG; MARTHA C. BYRNES; ROBERTO DEAZILAN; MARGARET DE BEERS BROWN; PATRICK R. DIXON; YONKEL N. GOLDSTEIN; GEORGE G. COWGANI; JOHN HISSERICH; JAMES HUSSEY; MARILYN J. MACKETT; PATRICIA M. VILLALOBOS; ADAM S. FERBER; DIANE C. YU; RICHARD J. ZANASSI; TERI L. NELSON; COLIN P. WONG; STEPHEN P. KLEIN, M.D., Defendants-Appellees	)	CV-96-03244-CAL Northern California **ORDER**

Before: BRUNETTI, RYMER and T.G. NELSON, Circuit Judges

The petition for rehearing is denied.

THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA
OFFICE OF ADMISSIONS
1149 SOUTH HILL STREET
LOS ANGELES, CALIFORNIA 90015
(213) 765-1500

March 28, 1995

Assigned Petition No. A(3)
Registration No. 557709551

Kenneth Owen
6098 Slopeview Court
Castro Valley, CA 94552

Dear Mr. Owen:

During its meeting on March 25, 1995, the Committee of Bar Examiners (Committee) took up consideration of your request for reconsideration of scores you received on your October 1994 First-Year Law Students' Examination and certification of having passed said examination. The Committee reviewed your correspondence with the Honorable Michael Sweeney, Assemblymember, and Adam Ferber, Director for Examinations, and concluded that there were no arithmetic or clerical errors in the calculation of your examination grade nor was there any evidence of departure from established grading procedures. The Committee therefore declined to reconsider your examination score for the October 1994 administration of the First-Year Law Students' Examination.

I am afraid that this is the final Committee decision, and is not subject to further administrative review.

Sincerely,

"s/John R. Rodriguez"
John R. Rodriguez
Director, Operations and Management

SUPREME COURT FILED
OCT 4-1995
Robert Wandruff Clerk
DEPUTY

SO46472

IN THE SUPREME COURT OF CALIFORNIA

KENNETH J. OWEN, Petitioner

v.

COMMITTEE OF BAR EXAMINERS, Respondent

Petition for writ of review DENIED

"s/Lucas"
Chief Justice

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

KENNETH J. OWEN,
Petitioner,

v.

THE STATE BAR OF CALIFORNIA AND
THE COMMITTEE OF BAR EXAMINERS,
Respondent.

On Petition for Writ of Certiorari
To The
SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

KENNETH J. OWEN
IN PRO PER
6098 Slopeview Court
Castro Valley, CA 94552
Telephone: (510) 582-0540

QUESTIONS PRESENTED

I. Did the State of California err by not providing Petitioner some kind of hearing before Petitioner was deprived of his right to practice law in California, in contravention of the Due Process Clause of the Fourteenth Amendment?

II. Is California Business & Professions Code, section 6060(g) invalid as applied, in contravention of the Equal Protection Clause of the Fourteenth Amendment?

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

March 18, 1996

Mr. Kenneth J. Owen
6098 Slopeview Court
Castro Valley, CA 94552

Re: Kenneth J. Owen
v. California State Bar, et al.
No. 95-1104

Dear Mr. Owen:

The Court today entered the following order in the above entitled case:

The petition for writ of certiorari is denied.

Sincerely,

"s/William K. Suter
William K. Suter, Clerk

FIFTH CAUSE OF ACTION
(General Challenge to Validity of California Rules of Court, Rule 952(d))

92. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by reference.

93. California Rules of Court, Rule 952(d) does not on its face or as applied, comport with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. The Rule, as administered by the Supreme Court Justices, applies to **every** person who attempts to invoke the jurisdiction of the Court on a Petition for Writ of Review of Committee determinations, not just plaintiff.

94. A **fundamental requirement** of due process of law is the **opportunity to be heard**. Rule 952(d) does not contain an express right to a hearing. "**If** a review is ordered by the Supreme Court, . . ." does not provide a right to a hearing. A denial of a Petition for Writ of Review, by the clear language of Rule 952(d), means that a party will **not** be given a **hearing** before the California Supreme Court Justices. Plaintiff's opportunity to be heard is left to the discretion of the California Supreme Court Justices. In Bar Admission Proceedings, it is the **duty** of the California Supreme Court to **re-examine** the entire record of the proceedings before the Committee of Bar Examiners. Plaintiff, on information and belief, and thereupon alleges that the California Supreme Court Justices did not **re-examine** the entire record, did no **investigation**, or make any **judicial determination** of Plaintiff's rights. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

95. Plaintiff has an approximately **5% chance** of being heard under the California Supreme Court's Petition for Writ of Review process. A one in twenty chance of being heard cannot be said to comport with the fundamental requirement of due process.

96. Plaintiff's only access to the courts in the State of California to resolve the issues presented in this complaint is left to the discretion of the California Supreme Court Justices. This procedure does not guarantee Plaintiff's rights under the due process clause.

97. Plaintiff has a **fundamental right** of access to the courts, which has been described as one aspect of the right to petition, protected by the First Amendment. Rule 952(d), on its face or as applied, does not comport with the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff requests relief as set forth below.

SIXTH CAUSE OF ACTION
(General Challenge to Validity of Business & Professions Code § 6060(g))

98. The allegations contained in the preceding paragraphs in this Complaint are incorporated herein by reference.

99. Business & Professions Code § 6060(g) does not on its face or as applied, comport with the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Law, as **administered** by the Committee Members, applies to **every** applicant who takes the FYLSX, not just Plaintiff.

100. The right to work in one's chosen profession has been deemed **fundamental** under the equal protection clause. Business & Professions Code § 6060(g) **invidiously discriminates** against students at unaccredited law schools, who are equally qualified to pursue a legal education and to practice law. The FYLSX is not necessary to achieve any compelling state interest.

101. Students who attend ABA accredited law schools, California accredited law schools, and unaccredited law schools in the State of California can **all** obtain Juris Doctorate degrees. Students who receive a Juris Doctorate degree from an unaccredited law school, but do not take or pass the FYLSX, can not take the General Bar Examination, and

consequently can not practice law. The law on its face makes absolutely no sense.

102. Business & Professions Code § 6060(g) is invalid as applied. The Committee Members have **rigged** the FYLSX in a subtle, yet fundamental way. Applicants taking the FYLSX are given **significantly less time** to answer similar General Bar Examination essay questions. The scores of applicants taking the FYLSX are **illegally and arbitrarily lowered**, resulting in failed scores. The law as administered by the Committee Members violates the Due Process and Equal Protection Clause of the Fourteenth Amendment.

103. Given that the State's legitimate interest is to protect unqualified students from spending time, money and effort in a legal career that has little chance of success, the Committee of Bar Examiners current policy of letting students spend three more years of their time, money and effort in obtaining a Juris Doctorate degree, and then not being allowed to take the general bar exam, flies in the face of the State's legitimate interest. See EXHIBIT B, at 8, and EXHIBIT F, at 11 (Petitioner may still continue to pursue his studies and complete the Juris Doctor program at Oakland College of Law). The State's legitimate interest in protecting unqualified students is no longer valid in view or the Committee's current policy. As a result of the Committee's current policy, numerous qualified students are now pursuing a legal education and will receive Juris Doctorate degrees from Oakland College of Law without ever having passed the FYLSX. Furthermore, requiring an applicant to take and pass an illegally and erroneously administered FYLSX is not rationally related to any legitimate state interest. Business & Professions Code § 6060(g) cannot even survive a mere rationality standard of review.

WHEREFORE, Plaintiff requests relief as set forth below.

SEVENTH CAUSE OF ACTION
(Declaratory Relief - 28 U.S.C. §§ 2201, 2202)

104. The allegations contained in the preceding paragraphs in this Complaint are incorporated herein by reference.

105. An actual controversy now exists between Plaintiff and Defendants as to whether defendants have violated Plaintiff's rights under the First and Fourteenth Amendments.

106. The parties require a judicial declaration of rights in order to know how to properly conduct the admission procedures for the California Bar. Unless this court issues such a declaration, there will **continue** to be uncertainty and controversy as to whether Defendants' admission procedures comply with the federal constitution. In addition, **numerous future claims** of a similar nature are likely to arise and require judicial resolution. By issuing a declaration of rights at this time, the Court will conserve judicial resources and provide guidance to the parties, and to others who are **similarly situated** as to the legality of the admission procedures of the Committee of Bar Examiners of the State Bar of California.

WHEREFORE, Plaintiff requests relief as follows:

1. A declaration of rights stating that the California Supreme Court Justice Defendants violate, and continue to violate, Plaintiff's, and others who are similarly situated, fundamental right of notice and hearing as guaranteed by the First and Fourteenth Amendments to the United States Constitution;

2. A declaration of rights stating that Committee Member Defendants have violated Plaintiff's right to Procedural Due Process, Substantive Due Process, and Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution;

3. An award of damages against Committee Member Defendants, Committee Attorney Defendants, Adam S. Ferber, and Dr. Stephen P. Klein, under the Due Process and Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983 fully compensating Plaintiff for the damages

suffered as a direct and proximate result of Defendants' actions;

4. An award of punitive damages in the amount of $800,000 against Committee Member Defendants, Committee Attorney Defendants, Adam S. Ferber, and Dr. Stephen P. Klein, under the Due Process and Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983;

5. An order declaring Plaintiff and all other similarly situated applicants as having passed the FYLSX;

6. An order declaring California Rules of Court, Rule 952(d) constitutionally invalid on its face and as applied;

7. An order declaring California Business & Professions Code § 6060(g) constitutionally invalid on its face and as applied;

8. Costs of suit, including attorney fees pursuant to 42 U.S.C. § 1988;

9. Such other and further relief as the court considers proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues so triable herein.

DATED: January 3, 1997

"s/Kenneth J. Owen"
KENNETH J. OWEN

THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA
OFFICE OF ADMISSIONS
1149 SOUTH HILL STREET
LOS ANGELES, CALIFORNIA 90015
(213) 765-1500

July 31, 1998

Kenneth Owen
6098 Slopeview Court
Castro Valley, CA 94552

RE: Appl. #1033
Reg. #557709551

Dear Mr. Kenneth James Owen:

You were deemed ineligible for admission to take the July 1998 General Bar Examination.

Eligibility for admission to take the California Bar Examination is based upon fulfillment of the legal education requirements which appear in Rule VII, Section 2 of the ***Rules Regulating Admission to Practice Law In California (Rules).***

You have not passed or establish exemption from the First-Year Law Students' Examination in accordance with the provisions of Rule VIII of the **Rules**.

Your ineligibility for admission to the examination entitles you to 60% refund of the fees paid in connection with your application. It will be processed and mailed to you in the near future.

If in the future you wish to seek admission to an examination, you must apply as a first time applicant and not as a repeating applicant.

Sincerely,

"s/John R. Rodriguez"
John R. Rodriguez
Director
Operations and Management